No. 435

IN THE SUPREME COURT OF THE UNITED STATES

MUTUAL LIFE INSURANCE COMPANY OF NEW YORK,
Petitioner,

versus

MINNIE L. B. HAMILTON and OAKLAND CORPORATION,
Respondents.

Petition for Writ of Certiorari

BRIEF OF RESPONDENTS

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STATEMENT OF THE CASE

The petition for certiorari is based solely upon the contention that the Circuit Court has decided an important question of Florida law in a way probably in conflict with applicable Florida decisions. It is not considered necessary or of aid to the Court to make any extended statement of the facts in the case at bar. A short statement would not do justice to respondent's case. The statement of the facts, as presented in the petition and brief accompanying the same, is partisan, incomplete and not sufficiently detailed to properly en-

lighten the Court. In this connection we shall content ourselves to refer to and adopt the fair statement of the case as presented in the opinion of the Circuit Court (R. 381-386).

Respondent takes two positions, viz:

(a) That there is no conflict between the decision of the Circuit Court and local decisions;

(b) That the Circuit Court applied the correct law as to evidence sufficient to fix the time of death where aided by the presumption of death and the fact of death.

ARGUMENT

At the outset it is respectfully suggested that the brief of petitioner does not comply with Rule 27 of this Honorable Court in the following respects:

(a) A sub-index of the matter in the brief with page references is not set forth;

(b) There is not set forth a concise statement of the case containing all that is material to the consideration of the question presented, **with appropriate page references to the printed record;**

(c) There is no assignment of errors or questions stated.

I.

NO CONFLICT BETWEEN DECISION OF CIRCUIT COURT AND LOCAL DECISIONS.

The petition is based upon one sole contention: That the Circuit Court has decided an important question of local law in a way probably in conflict with applicable local decisions. We take the position that there is no conflict.

That portion of the decision of the Lower Court (R. 391) 143 Fed. (2d) 726, which is referred to in petitioner's brief as presenting a conflict, is quoted as follows:

> "The plaintiffs have relied wholly upon inferences which they draw from circumstantial evidence to prove death by suicide on the 29th day of December, 1928. There is no direct testimony of death at any time or in any manner. (fol. 394) Since the opinion by Judge Sibley in the case of MUTUAL LIFE INSURANCE COMPANY OF NEW YORK vs. ZIMMERMAN, supra, the Florida rule that circumstantial evidence relied upon in a civil case must not only be consistent with the theory that authorizes recovery but must fairly and reasonably exclude any other explanation of the facts, has been modified by KING vs. WEIS-PATTERSON LUMBER COMPANY, 124 Fla. 272, 168 So. 858; STIGLETTS vs. McDONALD, 135 Fla. 385, 186 So. 233; and FIREMAN'S FUND INDEMNITY CO. vs. PERRY, 149 Fla. 410, 5 So. 2d 862. In the last cited case the Supreme Court of Florida said:

'In the case of Reed et vir. v. American Insurance Co. of Newark, New Jersey, 128 Fla. 549, 175 So. 224, 225, we stated the rule to be applied in testing the sufficiency of circumstantial evidence in civil cases, as follows:

" 'In civil cases the preponderance of evidence required, where circumstantial evidence is relied on as the method of proof, is a preponderance of all reasonable inferences that might be drawn from the circumstances in evidence to prove the principal fact sought to be established sufficient to outweigh all other contrary inferences. King v. Weis-Patterson Lumber Co., 124 Fla. 272, 168 So. 858.'

'In Stigletts v. McDonald, 135 Fla. 385, 186 So. 233, 235, we said:

" 'Circumstantial evidence must as a general rule be of such a conclusive nature that it is not reasonably susceptible of two equally reasonable inferences.' "

"It, therefore, is not the rule in Florida now that circumstantial evidence in a civil case must exclude every other (fol. 395) reasonable hypothesis than the one proposed to be proven. It is sufficient now if the circumstantial evidence amounts to a preponderance of all reasonable inferences that can be drawn from the circumstances in evidence to the

> end that the evidence is not reasonably susceptible of two equally reasonable inferences."

It will be noted that the Circuit Court merely states:

> "It, therefore, is not the rule in Florida now that circumstantial evidence **in a civil case** must exclude every other reasonable hypothesis than the one proposed to be proven." (Emphasis supplied)

Not only do the cases cited by the Court bear out this statement, as contained in the above quotation, but we shall endeavor to show that other cases likewise so decided and that the Court was eminently correct in this statement of the law of Florida, as enunciated by its Supreme Court.

If there is no probable conflict, then the petition here must fail. No other error is complained of. This Court is, therefore, only interested in determining: Where is the conflict?

The rule referred to by the Circuit Court applies in civil cases as to circumstantial evidence. If there is any exception to the rule as to circumstantial evidence in suicide cases, the Circuit Court made no reference to such rule or exception. We shall now review all the decisions in Florida which announce the general rule in civil cases from 1906 to date.

In **Abraham v. Baldwin,** 52 Fla. 151, 42 So. 591, the Court held:

> "The other objection is to the words, 'and in order for the defendant to justify or relieve herself therefrom it becomes necessary for such defendant to establish the truth of the words so uttered to the satisfaction of your minds by competent evidence to the exclusion of and beyond a reasonable doubt.'
>
> This charge was doubtless given on the authority of Schultz v. Pacific Insurance Co., 14 Fla. 73, text 121, and Williams v. Dickenson, 28 Fla. 90, text 113, 9 So. 847, where it was held that a fact must be established by the same evidence, whether it is to be followed by a civil or a criminal consequence, and that the character of the fact to be proven, and not the position of the party, determines the degree of proof to be required.
>
> This rule is said to have been established in England because the plaintiff may there be tried for the crime imputed to him upon a verdict of justification without the intervention of a grand jury. No such result follows here. Therefore the reason for the rule does not exist. See Cook v. Field, 3 Esp. 133; Wilmett v. Harmer, 8 Car. & P. 695 (34 E.C.L. 589); Ellis v. Buzzell, 60 Me. 209, 11 Am. Rep. 209.
>
> The decisions heretofore made by this court upon the point have not become the basis of property

rights, nor do they constitute a distinct policy in the administration of justice, and, as no harm can result in establishing a rule in accord with reason and the great weight of authority, the rule as first announced in Schultz v. Pacific Insurance Co., supra, and reluctantly followed in Williams v. Dickenson, supra, is now disproved.

In **Sovereign Camp of Woodmen v. Hodges,** (1916) 72 Fla. 467, 73 So. 347, the general rule as to circumstantial evidence in civil cases is stated:

"But the charge was held to be erroneous upon the authority of the Schultz Case. The rule announced in the Schultz Case, however, was definitely overruled in the case of Abraham v. Baldwin, 52 Fla. 151, 42 South. 591, 10 L.R.A. (N.S.) 1051, 10 Ann. Cas. 1148. So that, although love of life may be strong in mankind and self-destruction be regarded as in the nature of a criminal act, and the burden of proof rests upon the party asserting suicide, it may be regarded as settled by this court that such defense in a case of this character need not be established to the satisfaction of the jury beyond a reasonable doubt, in order that it may prevail, but that to maintain it the evidence should preponderate in favor of that contention. In this case, however, the evidence relied upon by the defendant to establish the defense was circumstantial, and while no presumption of law existed against the suicide of Mr. Hodges, the burden of proving his self-destruction rested upon the defendant, to be decided by

the jury as an inference of fact in the same manner as other facts are determined in civil cases." (p. 351)

In **Florida East Coast Ry. Co. v. Acheson,** (1931) 102 Fla. 15, 135 So. 551, the Court changed its rule as to the sufficiency of circumstantial evidence to sustain a verdict in a civil case. We cite therefrom the following statement:

> "(2) Circumstantial evidence is, of course, sufficient to sustain a verdict for damages in a civil case at law, and, where is is complete in its probative value, and excludes an hypothesis inconsistent with the theory that defendant committed the wrongful and negligent acts complained of, the verdict of a jury will not be disturbed as being contrary to the evidence. Sovereign Camp, W.O.W., v. Hodges, 72 Fla. 467, 73 So. 347.
>
> (3, 4) The value of circumstantial evidence consists in the conclusive nature and tendency of the circumstances relied upon to establish any controverted fact. Such evidence is always insufficient, where, assuming all to be proved which the evidence tends to prove, some other hypothesis may still be true; for it is the actual exclusion of every other hypothesis which invests mere circumstances with the force of proof. Whetston v. State, 31 Fla. 240, 12 So. 661." (p. 552)

It is evident that the Supreme Court of Florida overlooked the conflict in its decisions on this point, as in

the case of **City of Pensacola v. Herron,** 112 Fla. 742, 150 So. 877, the Court reverted back to the rule as laid down in **Abraham v. Baldwin,** supra, and followed by **Sovereign Camp v. Hodges, supra.** The Herron case holds:

> "When circumstantial evidence is the means of proof employed to prove an essential fact of this kind, the rule in civil cases is that the particular inference of the existence of the fact relied on as arising from the circumstances established by the evidence adduced, shall outweigh all contrary inferences to such an extent as to amount to a preponderance of all reasonable inferences that might be drawn from the same circumstances, whereas the rule in criminal cases is that the inference drawn shall be not only consistent with the existence of the fact sought to be proved, but wholly inconsistent with any other reasonable inference to the contrary."

In this decision the Court draws clearly the distinction between the rule obtaining in criminal cases and the rule to be followed in civil cases.

However, in 1934, the same Court rendered its decision in **Foster v. Thornton,** 113 Fla. 701, 152 So. 667, and, without mentioning the decision in **Pensacola v. Herron,** supra, (1933) again stated the rule in line with **Florida East Coast Ry. v. Atcheson,** supra, as follows:

> "(2) Where the circumstances raise a fair presumption of negligence involves a consideration of the very principle underlying the probative

force and admissibility of such evidence, and that is the logical connection between the circumstances and the result as to which the inquiry is directed. For the circumstances, therefore, to have any probative value as evidence of the principal question, they must of necessity be not only consistent with the theory that the result inquired into flowed therefrom, but inconsistent with any other result which might just as reasonably and logically be established by such circumstances." (p. 670)

In 1936, in **King v. Weis-Patterson Lumber Co.**, 124 Fla. 272, 168 So. 858, the Court again returned to the general rule as previously stated:

"Where the circumstantial evidence is relied on in a civil case to prove an essential fact or circumstance essential to recovery, the rule is that the particular inference of the existence of the fact relied on as arising from the circumstances established by the evidence adduced, **shall outweigh all contrary inferences** to such extent as to amount to a preponderance of all of the reasonable inferences that might be drawn from the same circumstances. This is a less rigid rule than applies in a criminal case, where the inference drawn must not only be consistent with the fact sought to be proved, but wholly inconsistent with any other reasonable inference to the contrary. City of Pensacola v. Herron, 112 Fla. 742, 150 So. 877; Sovereign Camp, W.O.W. v. Hodges, 72 Fla. 467, 73 So. 347." (p. 859). (Emphasis supplied)

In **Reed v. American Ins. Co.**, 128 Fla. 549, 175 So. 224 (1937), the Court followed the rule as announced in **King v. Weis-Patterson,** supra, as follows:

> "(3) One of the issues, perhaps the principal one, tried by the jury, was on the defendant's plea that the insured willfully set fire to the insured property. There was circumstantial evidence legally sufficient to support a finding in the affirmative of defendant's plea setting up this issue. In civil cases the preponderance of evidence required, where circumstantial evidence is relied on as the method of proof, is a preponderance of all reasonable inferences that might be drawn from the circumstances in evidence to prove the principal fact sought to be established sufficient to outweigh all other contrary inferences. King v. Weis-Patterson Lumber Co., 124 Fla. 272, 168 So. 858." (p. 225)

Again, in the case of **Stigletts v. McDonald,** 135 Fla. 385, 186 So. 233, (1938), the Court followed the rule as laid down in **King v. Weis-Patterson,** supra:

> "Circumstantial evidence must as a general rule be of such a conclusive nature that it is not reasonably susceptible of two equally reasonable inferences.
>
> 'The value of circumstantial evidence consists in the conclusive nature and tendency of the circumstances relied upon to establish any controverted fact. Such evidence is always insufficient, where,

assuming all to be proved which the evidence tends to prove, some other hypothesis may still be true; for it is the actual exclusion of every other hypothesis which invests mere circumstances with the force of proof. Whetson v. State, 31 Fla. 240, 12 So. 661.' Florida East Coast Ry. Co. v. Acheson, 102 Fla. 15, 135 So. 551, 552, 137 So. 695, 140 So. 467; 82 A.L.R. 213, note.

A later case modifies the rule in civil cases as follows:

'Where circumstantial evidence is relied on in a civil case to prove an essential fact or circumstance essential to recovery, the rule is that the particular inference of the existence of the fact relied on as arising from the circumstances established by the evidence adduced, shall outweigh all contrary inferences to such extent as to amount to a preponderance of all of the reasonable inferences that might be drawn from the same circumstances. This is a less rigid rule than applies in a criminal case, where the inference drawn must not only be consistent with the fact sought to be proved, but wholly inconsistent with any other reasonable inference to the contrary.' (King v. Weis-Patterson Lumber Company, 124 Fla. 272, 168 So. 858." (pp. 235-236)

It will be noted in the **Stigletts** case that the Court draws the distinction between its ruling in the **King** and **Atcheson** cases and clearly recognized that the **King** case modified the rule in civil cases, as the Court had previously stated it.

In the case of **Fireman's Fund Indemnity Co. v. Perry,** 149 Fla. 410, 5 So. (2d) 862, (1942) the Court reaffirmed its rule as laid down in the **Reed** case and the **King** case:

> "In the case of Reed et vir v. American Insurance Co. of Newark, New Jersey, 128 Fla. 549, 175 So. 224, 225, we stated the rule to be applied in testing the sufficiency of circumstantial evidence in civil cases, as follows:
>
> 'In civil cases the preponderance of evidence required, where circumstantial evidence is relied on as the method of proof, is a preponderance of all reasonable inferences that might be drawn from the circumstances in evidence to prove the principal fact sought to be establishes sufficient to outweigh all other contrary inferences. King v. Weis-Patterson Lumber Co., 124 Fla. 272, 168 So. 858.' (p. 863)

It will, therefore, appear that the Supreme Court of Florida has, since its decision in **Abraham v. Baldwin,** supra, decided in 1906, followed the general rule as applied to circumstantial evidence in civil cases, without interruption, except in the cases of **Florida East Coast Ry. Co. v. Atcheson,** supra, and **Foster v. Thornton,** supra.

Petitioner places strong reliance upon **Mutual Life Ins. Co. v. Zimmerman,** 75 F. (2d) 758, which was decided by the Circuit Court (5th) in 1935. But that case was not a disappearance case nor was it a suicide case and that Court so recognized by the following language (text (761):

> "The question here is whether Zimmerman was drowned on August 24, 1927, for there is nothing to show that he died by any other means or on any other date. The jury, though finding he was dead, declined to find that the death was accidental. The verdict seems to imply suicide; **but in our opinion the evidence does not show that he was dead at all at the expiration of the insurance.**" (Emphasis supplied)

It is, therefore, clear that the Circuit Court reversed the case on what it conceived to be the insufficiency of the evidence to show that Zimmerman was dead at all. The declaration in that case alleged that Zimmerman died on August 24, 1927. The plaintiff beneficiary brought suit on the policies in September, 1929. Therefore, the case was not concerned with the presumption of death from seven years absence nor was any such theory in any wise injected into the case. The Circuit Court further said in its opinion in the Zimmerman case (text 762):

> "There is a possibility that he is dead, but the circumstances are not such as to make that the only probable explanation of them. Circumstantial evidence, even in a civil case, must not only consist with the theory that authorizes recovery, but must fairly and reasonably exclude any other explanation of the facts. Unless it does this, the burden which rests upon the plaintiff to prove her case is not carried. Pennsylvania R. Co. v. Chamberlain, 288 U. S. 333, 53 S. Ct., 391, 77 L. Ed. 819; Florida East Coast R. Co. v. Acheson, 102 Fla. 15, 135 So. 551, 552, 137 So. 695, 140 So.

467; Foster v. Thornton, 113 Fla. 600, 152 So. 667."

It is clear from the foregoing language that the Circuit Court placed reliance upon the two decisions of the Florida Supreme Court in Florida East Coast R. Co. v. Atcheson and Foster v. Thornton, but overlooked the other decisions of the same Court hereinabove referred to, which laid down the rule as to circumstnatial evidence in civil cases. It will be particularly noted that the Court overlooked the decision in City of Pensacola v. Herron, supra, which was decided in November, 1933. It is still more important to note that the Circuit Court did not apply any law of Florida as to circumstantial evidence applicable in suicide cases, such as laid down in Sovereign Camp W. O. W. v. Hodges (petitioner's brief p. 10) or in **Blackwood v. Jones,** 149 So. 600, —— Fla. ——.

We respectfully suggest, therefore, that it does appear that the Supreme Court of Florida has modified the rule as to the sufficiency of circumstantial evidence in civil cases, as shown by the foregoing decisions, and that the Circuit Court was correct in so stating in the case at bar. The Circuit Court did not take the position that there was not an exception to this general rule as to certain issues in suicide cases. As to whether the Court should have applied the so-called "suicide rule" will be argued under the succeeding topic.

II.

CIRCUIT COURT APPLIED CORRECT LAW AS TO EVIDENCE SUFFICIENT TO FIX TIME OF DEATH WHERE AIDED BY PRESUMPTION OF DEATH AND FACT OF DEATH.

No decisions have been found in Florida touching the question of sufficiency of evidence to support the fixing of time of death in disappearance cases. The point is apparently not made by petitioner that the Circuit Court was in error in holding the evidence sufficient in determining death. Complaint is made only as to evidence fixing the time of death. The disappearance was at the end of December 1928. The policies remained in force and would not have expired until May 22, 1935 (R. 341-2). It was only necessary, therefore, that the fixing of the time of death was between the period from the 28th of December, 1928, the date of disappearance and the 22d of May, 1935. The policy was in effect, therefore, for a period of almost seven years. More than thirteen years had elapsed at the time of trial since the disappearance.

Davie v. Briggs, 97 U. S. 628, 97 Sup. Ct. 628, 24 L. Ed. 1086, held that in disappearance cases, there must be evidence of encountering some particular peril but this rule was departed from in **Fidelity Mutual Life Ins. Co. v. Mettler,** 185 U. S. 308, 22 Sup. Ct. 662, 46 L. Ed. 922, where it was held:

> "That the inference of death might arise from a disappearance inconsistent with the continuance of life even though exposure to particular peril is not shown."

The Fifth Circuit Court of Appeals recognized this distinction in the case of **United States v. Hayman,** 62 Fed. (2d) 118, and there accepted the rule as laid down in the case of **Tisdale v. Mutual Life Ins. Co.,** 26 Iowa, 170, 96 Am. Dec. 136, as follows:

> "The fact of the disappearance with no reason for it, the fact that though home-bound in his affections and habits, the absent one is never heard of again is itself without more, especially after seven years have passed, sufficient to support a verdict of death at the time of disappearance."

In the Hayman case the Court sustained findings based wholly upon circumstantial evidence and fixed the time of death as of the time of disappearance. There was no strong evidence as of suicide, or of desperate health or financial circumstances as in the case at bar. The Court approved the decision of the Supreme Court of Texas in **American Nat. Ins. Co. v. Hicks** (Tex. Com. App) 35 SW (2d) 128, 132, 75 A.L.R. 623, where it was said:

> "She was without the means of furnishing sufficient legal testimony to support it (her claim of death), until the fact had developed that Archie Hicks had absented himself for seven years successively. When this fact developed, the defendant, in error, for the first time, was in possession of sufficient legal evidence to support her cause of action. Aided by this potent fact, the other facts in the case became entitled to more weight * * * than they could possibly have been entitled to have been given, until the development

by time of the fact that Archie Hicks had absented himself for seven years."

The determination of death after the lapse of seven years would, as the Court held in the Hayman case, **becomes a potent fact and all other facts then become entitled to more weight.** It is respectfully submitted for that reason the strict rule, referred to in certain Florida decisions, where one has the burden of proving suicide, would not be applicable.

This point is well stated in 16 Amer. Juris. Section 35, page 29 as follows:

> "To raise a presumption of death at a particular time within seven years, special facts and circumstances should be shown, reasonably conducing to that end. The evidence need not be direct or positive; it may be indirect or inferential, but it must be of such a character as to make it more probable that he died at the particular time than that he survived. . . . **It has been declared, however, that the aid given by the presumption of the fact of death makes comparatively lighter the task of fixing the time of death."**
> (Emphasis supplied)

From the same text, Section 36, page 31, we again quote:

> "The death of an absent person before the expiration of seven years may be presumed or inferred from circumstances other than exposure to a

probably fatal danger, where such circumstances show an improbability of, or lack of motive for, a mere abandonment of his home. Such circumstances include the character, habits, conditions, affections, attachments, prosperity and objects in life of the absentee, which usually control the conduct of men, and in view of which no reasonable explanation can be given for his absence. Such an inference or presumption may also be warranted by the age, occupation, or prospective journey of a given individual or by circumstances indicating suicide."

The following leading cases have upheld the foregoing principles of law:

Travelers' Ins. Co. v. Bancroft, 65 F. (2d) 963 (C.C.A. 10th)

Northwestern Mutual Life Ins. Co. v. Stevens, 71 F. 258, text 261 (C.C.A. 8th)

Penn Mut. Life Ins. Co. v. Tilton, 84 F. (2d) 10 (C.C.A. 10th)

Equitable Life v. Sieg, 74 F. (2d) 606 (C.C.A. 6th)

In the case of **United States v. O'Brien,** 51 F. (2d) 37 (C.C.A. 4th) the Court held that the suicide note was sufficient to justify submitting the cause to the jury, coupled with the fact of the disappearance and absence, the Court holding that it was solely a jury question and that the inferences to be drawn must be drawn from questions of fact or mixed questions of fact and law, by

a jury, and that the drawing of such inference is peculiarly for the jury or trier of the facts.

The case of **Winter v. Supreme Lodge**, 101 Mo. App. 550, 73 SW 877, the Court recognized that when it comes to fixing the time of death only the following is required:

> "Plaintiff is not required to establish beyond a reasonable doubt the fact of death of the insured prior to the date of default, but merely to furnish proof which tends to show that the fact, or to make it appear to the jury more probable or credible than otherwise; that is to say, by the preponderance of the evidence."

The general rule is stated in Text 75 A. L. R. page 635:

> "If the evidence is disputed, or if, though not disputed, different relevant inferences may reasonably be drawn therefrom, the question of the fact of death of the insured, as well as the time of death, is one for the jury."

In the trial of the case at bar, the two issues were as to the **fact of death** and as to the **time of death, not as to the cause of death.** The strict rule contended for by petitioner with respect to circumstantial evidence in suicide cases may properly be applied where an affirmative defense of suicide is raised by insurer. There was no such issue in the case at bar. It was for the jury to say, taking into account, the facts and circumstances when the assured died. A case meeting widespread approval

on this point is **Mutual Life Ins. Co. v. Louisville Trust Co.**, 207 Ky. 654, 269 SW 1014, where it is said:

> "Under the facts proven, (the assured) was presumed to be dead. When he died was a fact to be found by the jury. His letters indicating his intention to commit suicide were themselves some evidence of that intention. He may truly have had no such intention; that was a question for the jury. . . . In the absence of anything to the contrary, the presumption is that these letters correctly stated his intention. Whether they did or not, and whether he committed suicide then or not, were questions for the jury. Although it is necessary that the beneficiary by distinct proof establish the time of the death of the assured, aided by the presumption of the fact of his death from absence, he is in a materially better position to effect a recovery than if unaided by such presumption."

There was abundant evidence in the case at bar sustaining suicide and, among other things, a letter written just ten days before the disappearance, where the insured was urging his bank to pay the premiums on his policy as follows: (Record 291-2)

> "I hope that for the protection of your Bank and my family, some arrangements may be made. I have been in bad health for quite a while and unable to work, but guess I will be alright or dead one by the time another premium comes due after this one."

This letter, coupled with great despondency of mind, desperate financial circumstances and indirect threats of suicide made to his daughter, and the extremely poor condition of the health, supports the finding of the jury, which has been approved by the Court.

But the case did not stand alone on the contention that there was suicide. This was only one phase of the evidence which indicated death within the period that the policy ran after disappearance. There was ample evidence to sustain the finding that death would have followed before the policies expired, due to the condition of health. The jury did not specify the cause of death but only the time of death.

> "Death may be presumed where, within the time, the absentee was known to be in a desperate state of health."
>
> **Jones on Evidence,** Civil cases, Volume 1, page 113.
>
> See also annotations:
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> 34 A. L. R. 1389
> 61 A. L. R. 1327
> 75 A. L. R. 634.

CONCLUSION

We respectfully submit, therefore, that the Circuit Court was correct in refusing to apply, in the case at bar, the strict rule as to the sufficiency of circumstantial evidence in suicide cases. True it is that all evidence, both

as to the fact of death and as to the time of death is circumstantial; such is true in all disappearance cases; **but the fact of death as found by the jury and the presumption of death arising after the passage of seven years, with unexplained absence, furnishes strong support to any circumstantial evidence which is offered for consideration of the jury in fixing the time of death.** There is no strict issue as to any particular cause of death offered to the jury in the case at bar. Many facts and circumstances are offered for their consideration in fixing the time of death at some time within the period before the policy expired.

Counsel for petitioner has not cited any case in the nature of the one at bar where the strict suicide rule has been applied, either from the Supreme Court of Florida, or elsewhere. We suggest that there is a sound reason for not applying such strict rule in cases of this kind.

We respectfully submit, therefore, that there is no conflict between the decision of the Circuit Court of Appeals and the Florida decisions, and that the petition should be denied.

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